

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ERIC PARTAK,

Plaintiff,

v.

**9:09-CV-1256
(FJS/ATB)**

PETER D. BEHRLE, Superintendent of Greene Correctional Facility, in his individual and official capacity; E. RUFF, Corrections Officer of Greene Correctional Facility, in his individual and official capacity; NORMAN R. BEZIO, Director of Special Housing Program, Department of Correctional Services; ERIC GUTWEIN, Commissioner's Hearing Officer, Department of Correctional Services; JOHN GIBILARO, Sergeant, Green Correctional Facility; JANE SANTOS, Sergeant, Greene Correctional Facility; DAN BAILEY, Correction Officer, Greene Correctional Facility; J. PLONKA, Correction Officer, Greene Correctional Facility; JOHN TIETZ, Correction Officer, Greene Correctional Facility; and BILL KLEIN, Sergeant, Greene and Great Meadow Correctional Facilities,

Defendants.

APPEARANCES

OF COUNSEL

ERIC PARTAK

05-A-6124

Attica Correctional Facility
99 Prison Road
P.O. Box 149
Attica, New York 14011
Plaintiff *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

The Capitol
Albany, New York 12224
Attorneys for Defendants

JAMES SEAMAN, AAG

SCULLIN, Senior Judge

ORDER

Currently before the Court are Magistrate Judge Baxter's September 12, 2011 Order and Report-Recommendation, *see* Dkt. No. 81, and Plaintiff's objections thereto, *see* Dkt. No. 83.

Plaintiff Eric Partak, a New York State prison inmate, commenced this civil rights action pursuant to 42 U.S.C. § 1983 against Defendants. In his second amended complaint, Plaintiff alleged that, while he was incarcerated at Greene Correctional Facility, Defendants (1) denied him due process in connection with a disciplinary hearing in which he was found guilty of drug possession, (2) retaliated against him for complaining about one of the named Defendants to a member of the Inspector General's Office, and (3) violated his Eighth Amendment right to be free from cruel and unusual punishment by housing him in filthy cell conditions. *See generally* Dkt. No. 65.

On June 24, 2011, Defendants filed a motion to dismiss Plaintiff's second amended complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). *See* Dkt. No. 73. Plaintiff opposed that motion, cross-moved to amend his second amended complaint, and submitted a proposed third amended complaint. *See* Dkt. Nos. 74, 79. Defendants filed a reply to Plaintiff's opposition to their motion to dismiss and opposed Plaintiff's motion to amend. *See* Dkt. Nos. 75, 80. Plaintiff filed a surreply to Defendants' reply in connection with the motion to dismiss. *See* Dkt. No. 78.

In an Order and Report-Recommendation dated September 12, 2011, Magistrate Judge Baxter recommended that this Court grant Defendants' motion to dismiss in its entirety and deny Plaintiff's motion to amend. *See* Dkt. No. 81. Plaintiff objected to Magistrate Judge Baxter's

recommendation. *See* Dkt. No. 83.

Where a party makes specific objections to portions of a magistrate judge's report and recommendation, the court conducts a *de novo* review of those recommendations. *See Trombley v. O'Neill*, No. 8:11-CV-0569, 2011 WL 5881781, *2 (N.D.N.Y. Nov. 23, 2011) (citing Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1)(C)). Where a party does not object or makes only conclusory objections, however, the court reviews the report and recommendation for "clear error" only. *See Salmini v. Astrue*, No. 3:06-CV-458, 2009 WL 1794741, *1 (N.D.N.Y. June 23, 2009) (quotation omitted). After conducting the appropriate review, a district court may decide to accept, reject, or modify those recommendations in whole or in part. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. Sept. 29, 2009) (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has conducted a *de novo* review of Magistrate Judge Baxter's Order and Report-Recommendation in light of Plaintiff's specific objections. Having completed its review, the Court hereby

ORDERS that Magistrate Judge Baxter's September 12, 2011 Order and Report-Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

ORDERS that Defendants' motion to dismiss is **GRANTED** in its entirety; and the Court further

ORDERS that Plaintiff's cross-motion to amend his complaint is **DENIED**; and the Court further

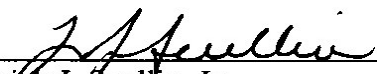
ORDERS that the Clerk of the Court shall enter judgment in favor of Defendants and

close this case; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: March 27, 2012
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge